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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/618,896	07/14/2003	Paul G. Ahlquist	960296.00096	7353

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EXAMINER	
CHEN, SHIN LIN	
ART UNIT	**PAPER NUMBER**
1632	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
31 DAYS	03/20/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/618,896	AHLQUIST ET AL.	
	Examiner	Art Unit	
	Shin-Lin Chen	1632	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 21-30 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☐ Claim(s) _____ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☒ Claim(s) 21-30 are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 21 and 22, drawn to a method of evaluating a substance as an antiviral therapy by exposing the substance to a protein of MAB1, MAB2, MAB3, or OLE1 and evaluating the effect of said substance on the stability of the protein, classified in class 435, subclass 4.

II. Claim 23, drawn to a method of evaluating a substance as an antiviral therapy by exposing the substance to a protein expression system of MAB1, MAB2, MAB3, or OLE1 protein and evaluating the effect of said substance on the expression level of the expression product, classified in class 435, subclasses 4 and 7.1.

III. Claims 24 and 25, drawn to a method of evaluating a substance as an antiviral therapy by exposing the substance to a transcription system that transcribes mRNA of MAB1, MAB2, MAB3, or OLE1 and evaluating the effect of said substance on the expression level of the mRNA product, classified in class 435, subclass 6.

IV. Claims 26 and 27, drawn to a method of evaluating a substance as an antiviral therapy by exposing the substance to a delta9 fatty acid desaturase enzyme and evaluating the effect of said substance on the stability or activity of the enzyme, classified in class 435, subclass 4.

V. Claim 28, drawn to a method of evaluating a substance as an antiviral therapy by exposing the substance to a protein expression system expressing delta9 fatty acid

desaturase enzyme and evaluating the effect of said substance on the expression level of the enzyme, classified in class 435, subclasses 4 and 7.1.

VI. Claim 29, drawn to a method of evaluating a substance as an antiviral therapy by exposing the substance to a transcription system that transcribes mRNA of delta9 fatty acid desaturase and evaluating the effect of said substance on the expression level of the mRNA product, classified in class 435, subclass 6.

VII. Claim 30, drawn to a method of evaluating a substance as an antiviral therapy by exposing the substance to a transcription system that transcribes mRNA of delta9 fatty acid desaturase and evaluating the effect of said substance on the stability of the mRNA product, classified in class 435, subclass 4.

2. The inventions are distinct, each from the other because of the following reasons:

Groups I-III are distinct from each other because they are drawn to methods of using different compositions having different chemical structures, physical properties and biological functions, and requiring separate search: protein, protein expression system, and transcription system. Thus, they are methods that differ at least in objectives, method steps, reagents and/or dosages, schedules used, response variables, and criteria for success. They have different classifications and require separate search. Thus, they are patentably distinct from each other. Similarly, groups IV, group V and groups VI-VII are patentably distinct from each other for the same reasons.

Groups VI and VII are distinct from each other because they are drawn to different scientific consideration: evaluating the effect of a substance on the expression level of the mRNA product vs. evaluating the effect of a substance on the stability of the mRNA product.

They are methods that differ at least in objectives, method steps, reagents and/or dosages, schedules used, response variables, and criteria for success. They have different classifications and require separate search. Thus, they are patentably distinct from each other.

Groups I-III and groups IV-VII are distinct from each other because they are drawn to methods of using different compositions having different chemical structures, physical properties and biological functions, and requiring separate search: MAB1, MAB2, MAB3 and OLE1 genes are different from delta9 fatty acid desaturase gene. Searches for those genes are not coextensive. Thus, those genes are patentably distinct from each other and require separate search.

Upon election of a group from groups I-III, a further restriction is required as follows:

MAB1, MAB2, MAB3 and OLE1 genes are different genes. The chemical structures of different genes are different from each other and their gene product functions also differ from each other. Thus, those genes are patentably distinct from each other and require separate search. Applicant is required to elect a **single** gene for consideration by examiner. It should be noted that this is **not** an election of species.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter and as shown by their different classification, restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(I).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shin-Lin Chen whose telephone number is (571) 272-0726. The examiner can normally be reached on Monday to Friday from 9:30 am to 6 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Paras can be reached on (571) 272-4517. The fax phone number for this group is (571) 273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to (571) 272-0547.

Patent applicants with problems or questions regarding electronic images that can be viewed in the Patent Application Information Retrieval system (PAIR) can now contact the USPTO's Patent Electronic Business Center (Patent EBC) for assistance. Representatives are available to answer your questions daily from 6 am to midnight (EST). The toll free number is (866) 217-9197. When calling please have your application serial or patent number, the type of document you are having an image problem with, the number of pages and the specific nature of the problem. The Patent Electronic Business Center will notify applicants of the resolution of the problem within 5-7 business days. Applicants can also check PAIR to confirm that the problem has been corrected. The USPTO's Patent Electronic Business Center is a complete service center supporting all patent business on the Internet. The USPTO's PAIR system

provides Internet-based access to patent application status and history information. It also enables applicants to view the scanned images of their own application file folder(s) as well as general patent information available to the public.

For all other customer support, please call the USPTO Call Center (UCC) at 800-786-9199.

Shin-Lin Chen, Ph.D.

SHIN-LIN CHEN
PRIMARY EXAMINER